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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,109	12/01/2003	Dennis J. May	010930.00113	3336

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EXAMINER

SIPOS, JOHN

ART UNIT PAPER NUMBER

3721

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/725,109	Applicant(s) MAY ET AL.	
	Examiner John Sipos	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

ELECTION

Claims 19-21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on December 12, 2004.

REJECTIONS OF CLAIMS BASED ON PRIOR ART

Claims 1 and 3-6 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Evans (4,675,945) in view of May (5,165,216). The patent to Evans shows a product-netting machine comprising a base 56, a chute 38, a product receiver 160, 164 at the discharge end of the chute, voider gates 70-76 to form a rope section, and clippers to clip the rope section of the netting. The patent to Evans lacks a handle forming operation. The patent to May shows a packaging machine which includes a the filling of a tube, forming a rope section, forming the section into a looped handle and clipping the end of the handle. The handle forming mechanism comprises of a shaft 22 that is moved transversely to the rope section to form a looped handle. It would have been obvious to one of ordinary skill in the art to provide the device of Evans with a handle forming mechanism as shown by May to form handles to carry the packages.

Claims 16 and 17 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Evans (4,675,945) in view of May (5,165,216) and further in view of the admitted prior art. The use of sensors to activate a clipping mechanism (claims 16

and 17) are well known in the art and it would have been obvious to one skilled in the art to provide Evans with a sensor to sense the product and actuate the clipping mechanism to automate the operations.

Claims 12-15 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Evans (4,675,945) in view of May (5,165,216) and Klein (3,763,621). The patent to Klein shows a package forming machine comprising a chute 12, a pair clippers 27 and a pair of pivotable guides 40 to firmly hold the package during the discharge and clipping operations. It would have been obvious to one of ordinary skill in the art to provide the Machine of Evans with pivotable guides as shown by Klein to positively hold the package during discharge and clipping operations.

Claims 18 is rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Evans (4,675,945) in view of May (5,165,216) and Longo (3,815,323). The Evans patent lacks the use of ribs in the packaging chute. The patent to Longo shows a packaging chute 10 on which the packaging material is placed and ribs 54 inside the chute to guide and compress the product. It would have been obvious to one of ordinary skill in the art to provide the chute of Evans with ribs as shown by Longo to guide and compress the product as it is pushed into the packaging material.

RESPONSE TO APPLICANT'S ARGUMENTS

The 35USC112 rejection has been withdrawn in view of Applicants' arguments.

Similarly, the art rejections based on the patent to Ailey have been withdrawn in view of the Declaration Under 37CFR1.132.

Applicants' arguments with respect to the rejection of the claims based on the other art have been considered but are not persuasive.

Applicants argue that the references do not suggest the claimed invention and that there is no motivation to combine the references. It should first be stated that the two applied references, Evans and May, are analogous and related in that they both are directed to operations for filling a tubular casing and applying clips to form packages. Both references show the application of spaced clips to the tube. The patent to May clearly teaches the forming of handles from the tube portions adjacent the clips and the advantages and benefits of such handles in that the packages can be carried and moved (see column 1, line 18 et seq.). This advantage provides suggestion and motivation for combining the references.

Applicants' argument on page 9 that Evans solves an entirely different problem has little bearing on the combination of references since it is the secondary reference to may that suggests the use of handles in a similar machine.

Regarding claims 16 and 17, the assertions made by the Examiner in the last Office action and Applicants silence regarding these claims are considered as an admission of prior art.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

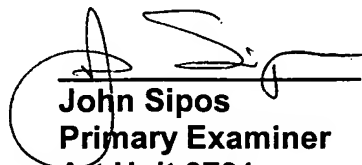
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **571-272-4668**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

The **FAX** number for Group 3700 of the Patent and Trademark Office is **(703) 872-9302**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at **571-272-4467**.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Receptionist whose telephone number is (703) 308-1148.


John Sipos
Primary Examiner
Art Unit 3721